

ZZW
DAC
P/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant:	Mark D. Scott, et al.	Examiner:	R. Hayes
Serial No.	09/323,765	Group Art Unit:	1647
Filed:	June 1, 1999	Docket No.	259.006US1
Title:	ANTIGENIC MODULATION OF CELLS		

MAIL STOP PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

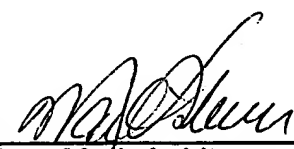
The following documents are hereby submitted:

- ☒ Petition to Revive an Unintentionally Abandoned Application with authorization to pay \$750.00 fee
- ☒ Copy of Communication Re: Appeal
- ☒ Transmittal Sheet
- ☒ Return postcard

Authorization is hereby given to charge Deposit Account Number 50-1391 the \$750.00 fee for the Petition to Revive an Unintentionally Abandoned Application.

Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers if an additional extension of time is deemed necessary by the Office. Authorization is hereby given to charge Deposit Account Number 50-1391 if such additional extension is necessary.

MARK A. LITMAN & ASSOCIATES, P.A.
York Business Center, Suite 205, 3209 W. 76th St.
Edina, MN 55435 (952-832-9090)

By: 
Atty: Mark A. Litman
Reg. No. 26,390

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Petitions, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 23 August 2006.

Mark A. Litman
Name


Signature



Application No.

09/323,765

Examiner

Robert C. Hayes, Ph.D.

Applicant(s)

SCOTT ET AL.

Art Unit

1649

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☒ The appeal brief filed on 5/2/06 is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: Applicants have failed to provide a Brief in proper form (i.e., related to rejections 1-3 still pending from the Final Office Action of 20050422, etc.) as indicated in the two Notifications for a defective Brief (Paper NOs: 20051223 & 20060425). Note there never were 7 grounds of rejection (pg. 8, 11-17 & 31), no "virus particles" "claimed" during prosecution (i.e., cells are not viruses), Limm et al (1980) is not Lin et al (1976-made of record 6/1/04; pg.31), which further is not recited in the grounds of rejection. Note that the 112, 2nd pp rejection no longer exists (pg. 8 & 10). It is also suggested that 4c & 4d, 5e & 5f, 6g & 6h & 7i be correctly recited as in the submitted claims of 11/26/04 (i.e., 4a & 4b, etc, etc.).

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

ROBERT C. HAYES, PH.D.
PRIMARY EXAMINER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant: Mark D. Scott et al.

Examiner: R. Hayes

Serial No.: 09/323,765

Group Art Unit: 1647

Filed: June 1, 1999

Docket: 259.006US1

Title: ANTIGENIC MODULATION OF CELLS

MAIL STOP: PETITION

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED
APPLICATION UNDER 37 CFR 1.137(b)**

Dear Sir/Madam:

FACTUAL BACKGROUND

1) This application prosecution has been replete with concerted and repeated attempts to avoid prosecution of the application by the PTO. The latest round of refused examination was in the Communication Re: Appeal holding the Brief in Non-Compliance and the Application Abandoned. This Communication was mailed on July 27, 2006.

2) Even though there were errors in the third Brief On Appeal submitted, with the Rules changing and the reasons for objection constantly changing by action of the PTO, the Brief was in condition for Appeal, even if less than perfect.

3) Upon investigation, it was discovered that the erroneous citation of references by the Examiner was at least in part a cause of the failure for a proper response to have been made.

4) As the documents included with this Petition clearly shows that all objections made by the Examiner have been addressed, and that Applicants have consistently made a good faith attempt to continue prosecution of this application, the Abandonment of this Application is clearly in error, was inadvertent and/or unintentional, and should be revived and the Brief On Appeal accepted at this time, **and finally provided with a substantive Examiner's Answer.**

7) Applicants, through their Attorney of Record, hereby petition to have the Application re-opened, and to have the Abandonment withdrawn.

8) The fee required for a petition to revive an unintentionally abandoned application under 1.17(m), the amount set forth of \$750.00 (small entity applies), is hereby authorized to be withdrawn from Attorney's Deposit Account No. 50-1391.

The other required reply in this Application under the guidelines of 37 C.F.R. 1.37(b) constituted only the response to the Notice of Appeal, which is respectfully submitted at this time. Nothing further was requested and each of the required steps prior to the Office Action was timely done as shown by the enclosed documents. As the Response to the Restriction Requirement has now been submitted, the Application should be re-opened.

Applicants hereby petition to revive the application due to the fact that the delay in filing the response to the Office Action causing by the abandonment of the application was unintentional and/or inadvertent, and was the sole responsibility of the U.S. Patent and Trademark Office.

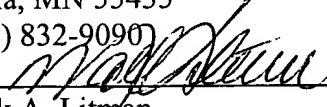
CONCLUSION

The contact person is invited to telephone Applicant's attorney (952) 832-9090 if necessary. If necessary please charge any additional fees to Deposit Account No. 50-1391 for the petition for revive unintentional abandonment under 37 CFR 1.137(b).

Respectfully submitted,
SCOTT et al.

By Their Representatives,
Mark A. Litman & Associates, P.A.
York Business Center, Suite 205
3209 West 76th Street
Edina, MN 55435
(952) 832-9090

Date: 23 August 2006

By 
Mark A. Litman
Reg. No. 26,390
(952) 932-9090

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 23 August 2006.

Mark A. Litman
Name


Signature